

FILED

APR 14 2023

CLERK, U.S. DISTRICT CLERK  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_  
*[Signature]*  
DEPUTY

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

ADAM TIJERINA, §  
§  
Plaintiff, §  
§  
vs. § CIVIL ACTION NO: 5:22-cv-00928-XR  
§  
NATIONAL DEBT RELIEF, LLC, §  
§  
Defendant. §

**DEFENDANT'S ORIGINAL COUNTERCLAIM**  
**AGAINST PLAINTIFF ADAM TIJERINA**

National Debt Relief, LLC, (“NDR”) Defendant in the above-captioned cause, files this Counterclaim against Adam Tijerina, Plaintiff in the above-captioned cause, and in support show as follows:

**I.**  
**NATURE OF THE ACTION**

1. NDR brings this Counterclaim based on Tijerina’s recently discovered fraudulent actions and breach of the Severance Agreement entered into between the parties on June 18, 2021 (the “Severance Agreement”). NDR recently learned that Tijerina fraudulently induced NDR to enter into the Severance Agreement with Tijerina which Tijerina subsequently breached by bringing suit against Defendant. As a result, NDR has incurred the expense of paying Tijerina under the Severance Agreement and the expense of defending this wholly frivolous lawsuit.

**II.**  
**PARTIES**

2. NDR is a foreign limited liability company incorporated under the laws of New York.

3. In his Original Complaint, Tijerina states he is a resident of Bexar County, Texas. ECF No. 1 ¶ 8.

**III.**  
**JURISDICTION & VENUE**

4. This Court has original subject-matter jurisdiction over Tijerina's FLSA claims against NDR as set forth in his Original Complaint because they arise under federal law. 28 U.S.C. § 1331. This Court has supplemental subject-matter jurisdiction over this Counterclaim pursuant to 28 U.S.C. § 1337(a) because this Counterclaim is so related to Tijerina's FLSA claims that together they form part of the same case or controversy for purposes of Article III of the United States Constitution. The Court has diversity jurisdiction under 28 U.S.C. § 1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000. Specifically, Tijerina is a citizen of Texas and NDR is a citizen of New York and Florida because its members are citizens of New York and Florida.

5. This Court has personal jurisdiction over Tijerina, who admits he is a resident of this district and division and has previously appeared before this Court as Plaintiff in the above-captioned cause.

6. The Court has personal jurisdiction over the NDR with respect to this Counterclaim because the Counterclaim arises out of NDR's contacts with the forum state and therefore the Court may exercise specific jurisdiction over NDR with respect to this Counterclaim.

7. Venue is proper in this Court because a substantial part of the events or omissions giving rise to this Counterclaim occurred in this district and in this division. 28 U.S.C. § 1331(b)(2).

**IV.**  
**FACTS**

8. Plaintiff Adam Tijerina provided marketing services from time to time to NDR from June 2014 until June 2021, at which time his relationship with NDR was severed. As part of the service he provided to NDR, for which he billed NDR at an hourly rate, Tijerina purchased and set up multiple domain names and acquired other intellectual property on NDR's behalf (hereinafter the "IP Assets").

9. The IP Assets were intended for NDR's sole, beneficial, and commercial use, and were material to its business.

10. In or about June 2021, at or near the end of its relationship with him, NDR discovered that Tijerina had acquired the IP Assets in his personal name, rather than in NDR's name, and that Tijerina, therefore, personally owned those assets. In addition to having personal ownership of the IP Assets, Tijerina had not provided NDR any passwords or other information necessary to operate or access the property without his assistance or involvement.

11. To obtain ownership and control over the IP Assets, NDR entered into a written agreement with Tijerina (hereinafter the "Severance Agreement") whereby, *inter alia*, Tijerina transferred all ownership, right, and title to the IP Assets to NDR.

12. NDR and Tijerina negotiated the terms of the Severance Agreement. As part of the negotiation, Tijerina requested that NDR increase the consideration it was to pay him under the Severance Agreement to compensate him for allegedly unpaid overtime work.

13. Although NDR disagreed that Tijerina was entitled to overtime compensation, it agreed, at Tijerina's request, to increase the amount it paid him under the Severance Agreement by more than \$29,000 (hereinafter the "Additional Consideration"). The parties executed the Severance Agreement on June 18, 2021, and NDR thereafter paid to Tijerina the \$145,600 in

total consideration (hereinafter the “Total Consideration”), which included the Additional Consideration that the parties negotiated to fully compensate Tijerina for his overtime claim.

14. In exchange for the amounts NDR agreed to pay Tijerina under the Severance Agreement, Tijerina agreed, *inter alia*, to release certain causes of action and claims against NDR. He also represented in the Severance Agreement that he had been paid or had received all compensation and benefits due to him by virtue of his working relationship and the cessation of his working relationship with NDR, including, without limitation, all compensation for hours worked and services provided:

Receipt of All Remuneration. As of this Separation Date, Tijerina has been paid or has received all compensation and benefits due to him by virtue of his working relationship and the cessation of his working relationship with NDR, including without limitation all compensation for hours worked and service provided.

Severance Agreement, ¶ 11.

15. Tijerina also agreed, in the Severance Agreement, to release any FLSA claims that he might have against NDR. He further agreed that it would be a default under the Severance Agreement to commence a case, proceeding, or other action against NDR arising out of or relating to Tijerina’s working relationship with NDR or any of the released claims.

Default. The occurrence of one or more of the following shall constitute a Default under this Agreement:

Tijerina commences a case, proceeding or other action against any of the NDR Entities arising out of or relating to his working relationship with NDR, asserting any Released Claims.

Severance Agreement, ¶¶ 7 and 12.

16. Tijerina’s representations, promises, and releases, as contained in the Severance Agreement, materially induced NDR to agree to and execute the Severance Agreement and to pay Tijerina the Total Consideration, including the Additional Consideration.

17. NDR would not have executed the Severance Agreement or agreed to pay the Total Consideration or the Additional Consideration in the absence of Tijerina's representations, promises, and releases as contained in the Severance Agreement.

18. NDR made all payments due under the Severance Agreement and fully performed all of its obligations under same.

19. Despite the plain language of the Severance Agreement, including the representations, release and conditions of default found therein, Tijerina filed this suit alleging violation of the Fair Labor Standards Act on August 26, 2022, just two months after he received his final payment under the Severance Agreement.

20. Tijerina gave his deposition in the above captioned lawsuit on February 15, 2023. In his deposition, when questioned about his release of his claims for overtime under the Fair Labor Standards Act, Tijerina unequivocally testified (with his counsel present and without objection) that he had two different attorneys review the terms of the Severance Agreement and advise him, prior to him signing, that his release of his FLSA claim was supposedly ineffective.<sup>1</sup> Tijerina further testified his attorney told him “[w]hy don't you sign the agreement, get paid the consideration, and then pursue the overtime afterwards?” The attorney further told Tijerina, “[i]f we want to, we can pursue that because you can't waive that right.” Believing that the release was ineffective, Tijerina never informed NDR prior to execution of the Agreement that despite negotiating and receiving a payment for overtime, he intended to pursue a subsequent lawsuit against the Company, and otherwise made the representations set out in Paragraph 10 above. Instead, Tijerina testified that after receiving this advice, he signed the Severance Agreement,

---

<sup>1</sup> Tijerina additionally testified at his deposition that he charged expenses he incurred and other non-work activities to NDR as hours worked. Thus, the hours Tijerina charged to NDR necessarily do not represent the actual number of hours that Tijerina worked. Tijerina repeatedly testified that he could not recall when he did this and for how many hours, making it impossible to calculate how many hours Tijerina allegedly worked per week.

believing it to be ineffective as to his claims for overtime, and subsequently bought suit alleging he was due overtime under the FLSA.

21. Through his fraudulent representation that he would not bring a case against NDR arising out of or relating to his working relationship with NDR or any of the released claims and his failure to disclose that he did not believe the Severance Agreement was effective as to his claims under the FLSA, Tijerina fraudulently induced NDR to enter into the Severance Agreement and fully pay him pursuant to the terms of the Severance Agreement.

22. Because of Tijerina's fraudulent inducement, failure to disclosure and breach of the Severance Agreement, NDR was harmed— NDR paid Tijerina a sum that he was not entitled to, and is now being forced to spend time and money (including attorneys' fees) defending against this frivolous lawsuit Tijerina brought for a claim he negotiated an additional payment for and in turn released.

**V.**  
**CAUSES OF ACTION**

**COUNT ONE: COMMON LAW FRAUD, FRAUD IN THE INDUCEMENT  
AND FRAUD BY NONDISCLOSURE UNDER TEXAS LAW**

23. NDR incorporates the foregoing paragraphs herein by reference.

24. Tijerina represented that he was releasing his claims under the FLSA and would not file suit against NDR for any claim arising out of or relating to his working relationship with NDR or any of the released claims when he agreed to and executed the Severance Agreement. Tijerina made this false representation knowingly, with the intent to defraud NDR. Specifically, Tijerina consulted an attorney and was advised that he was not effectively releasing his FLSA overtime claim even if he executed the agreement, and that he should execute the agreement with the intent not to comply with its terms, and only after accepting the consideration, bring an additional lawsuit later. Tijerina thereafter knowingly negotiated an extra payment due to the

hours he worked that exceeded 40 hours a week, accepted the full amount of consideration from NDR while planning to sue NDR in breach of the express terms of the Severance Agreement once Tijerina received the final payment. Tijerina did not disclose this information to NDR at anytime prior to or at the execution of the Severance Agreement.

25. The false representation was material. NDR would not have entered into the Severance Agreement but for Tijerina's false representation and failure to disclose. The release of all claims and agreement not to sue for any claim arising out of or relating to Tijerina's working relationship with NDR was a key, material term in NDR agreeing to execute the Severance Agreement.

26. When Tijerina executed the Severance Agreement and represented to NDR he was releasing his claims and would not bring suit against NDR for any released claim arising out of or relating to his working relationship with NDR, he did so knowing that such representation was false as evidenced by his testimony in this suit and the advice he testified that he received from counsel.

27. Tijerina made this false representation to NDR with the intent that it act on it and execute the Severance Agreement and pay him pursuant to same.

28. NDR in fact did execute the Severance Agreement and fully perform pursuant to its terms.

29. Tijerina then filed the instant lawsuit for violations of the FLSA, both a released claim and one arising out of or relating to his working relationship with NDR, despite executing the Severance Agreement that he fraudulently induced NDR to pay him under.

30. Tijerina's fraud thus has harmed NDR because it paid Tijerina under the terms of the Severance Agreement and because NDR has been injured in that it must now defend against

a lawsuit based on claims that are part of the release therein and that Tijerina had no intention of ever releasing.

**COUNT TWO: BREACH OF CONTRACT UNDER TEXAS LAW**

31. NDR incorporates the foregoing paragraphs herein by reference.
32. The parties entered into a valid binding contract, the Severance Agreement, on June 18, 2021.
33. NDR fully performed all of its obligations under the Severance Agreement and paid Tijerina in full the \$145,600 due Tijerina under the Severance Agreement.
34. Tijerina breached paragraphs 7, 11 and 12 of the Severance Agreement when he filed the present lawsuit. Tijerina has sustained actual damages, including the severance amount paid to Tijerina and NDR's costs of defense against Tijerina's frivolous lawsuit.

**COUNT THREE: BREACH OF THE DUTY OF LOYALTY UNER TEXAS LAW**

35. NDR incorporates the foregoing paragraphs herein by reference.
36. Pleading in the alternative, a fiduciary relationship existed between Tijerina and NDR. Specifically, Texas recognizes that the agent principal relationship gives rise to a fiduciary duty. An agent has a duty to deal openly with the employer, to fully disclose to the employer information about matters affecting the company's business and a duty to deal fairly with the principal in all transactions between them.
37. Tijerina breached that duty when he purchased and operated multiple domain names and had acquired other intellectual property for NDR under his own name and ownership and not NDR's ownership and failed to provide NDR any passwords or other necessary information to operate or access the property. The breach resulted in injury to NDR and a benefit to Tijerina in the amount of the severance agreement payment.

**COUNT FOUR: UNJUST ENRICHMENT UNDER TEXAS LAW**

38. NDR incorporates the foregoing paragraphs herein by reference.
39. Tijerina procured the payment of \$145,600 from NDR through fraud. Tijerina thereby obtained a benefit to which he was not entitled and was unjustly enriched at NDR's expense.
40. NDR is entitled to restitution of the fraudulently received payment made to Tijerina in an amount to be determined at trial.

**VI.**  
**JURY DEMAND**

NDR hereby demands trial by jury on the claims presented in this Counterclaim.

**VII.**  
**PRAYER**

WHEREFORE, PREMISES CONSIDERED, NDR prays this Court award it the following:

- a) actual damages, including the severance amount paid to Tijerina and NDR's costs of defense against Tijerina's frivolous lawsuit;
- b) exemplary damages based on clear and convincing evidence showing that Tijerina committed fraud;
- c) restitution damages under NDR's equitable causes of action;
- d) attorneys' fees;
- e) pre- and post-judgment interest;
- f) court costs; and
- g) all other relief, in law or at equity, to which NDR may show itself justly entitled.

Date filed: April 4, 2023

Respectfully submitted,

*Of Counsel:*

Katie Banks  
State Bar No. 24092114  
Fed. ID No. 2516169  
LITTLER MENDELSON, P.C.  
A PROFESSIONAL CORPORATION  
1301 McKinney Street  
Suite 1900  
Houston, TX 77010  
713.951.9400 (Telephone)  
713.951.9212 (Telecopier)  
kbanks@littler.com

*/s/ David B. Jordan*  
\_\_\_\_\_  
David B. Jordan (Attorney-in-Charge)  
State Bar No. 24032603  
Fed. ID No. 40416  
LITTLER MENDELSON, P.C.  
A PROFESSIONAL CORPORATION  
1301 McKinney Street  
Suite 1900  
Houston, TX 77010  
713.951.9400 (Telephone)  
713.951.9212 (Telecopier)  
djordan@littler.com

**ATTORNEY FOR DEFENDANT  
NATIONAL DEBT RELIEF, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of April 2023, a true and correct copy of the foregoing Defendant's Original Answer and Affirmative and Other Defenses to Plaintiff's Complaint was filed via CM/ECF, and served via the Court's e-filing system, email, and/or United States mail to the individuals listed below:

Colby Qualls  
Josh Sanford  
SANFORD LAW FIRM, PLLC  
Kirkpatrick Plaza  
10800 Financial Centre Pkwy, Suite 510  
Little Rock, Arkansas 72211

**ATTORNEYS FOR PLAINTIFF**

*/s/ David B. Jordan*  
\_\_\_\_\_  
David B. Jordan

## EXHIBIT B

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF TEXAS  
2                   SAN ANTONIO DIVISION

3                   ADAM TIJERINA,         )  
3                   Plaintiff,         )  
4                   vs.                   ) CIVIL ACTION NO: 5:22-CV-00928-XR  
4                   NATIONAL DEBT        )  
5                   RELIEF, LLC,        )  
5                   Defendant.        )

7                   ORAL DEPOSITION OF

8                   ADAM TIJERINA

8                   February 15, 2023

9                   Volume 1

10  
11                  ORAL DEPOSITION OF ADAM TIJERINA, Volume 1,  
12                  produced as a witness at the instance of the Defendant,  
13                  and duly sworn, was taken in the above-styled and  
14                  numbered cause on the DATE, from 11:07 a.m. to 6:04  
15                  p.m., before Dana Shapiro, CSR, in and for the State of  
16                  Illinois, reported by machine shorthand, at 100  
17                  Congress Avenue, Suite 1400, Austin, Texas 78701,  
18                  pursuant to the Federal Rules of Civil Procedure and  
19                  any provisions stated on the record or attached hereto.

1 A P P E A R A N C E S  
2

3 FOR THE PLAINTIFF:

4 MS. LAURA EDMONDSON

5 SANFORD LAW FIRM, PLLC

KIRKPATRICK PLAZA

10800 Financial Centre Pkwy, Suite 510

6 Little Rock, Arkansas 72211

501-221-0088

7 laura@sanfordlawfirm.com

8 FOR THE DEFENDANT:

9 LITTLER MENDELSON, P.C.

MR. DAVID B. JORDAN

10 MS. KATIE BANKS (appeared via video teleconference)

11 1301 McKinney Street, Suite 1900

Houston, Texas 77010

713-951-9400

12 djordan@littler.com

kbanks@littler.com

13 -and-

14 MR. EDWARD GROH

NATIONAL DEBT RELIEF

15 180 Maiden Lane, 30th Floor

New York, New York 10038

609-558-7400

16 ed.groh@nationaldebtrelief.com

17 ALSO PRESENT:

MS. ERICA VARGAS

18

19

20

21

22

23

24

25

1 BY MR. JORDAN:

2 Q. I'm going to hand you what's been marked as  
3 Exhibit 3. That's your signature on that document?

4 A. Yes, it is my chicken scratch.

5 (WHEREUPON, a certain document was  
6 marked Deposition Exhibit No. 4,  
7 for identification, as of 2/15/23.)

8 BY MR. JORDAN:

9 Q. Same here on Exhibit No. 4, that's your  
10 signature?

11 A. 2006, Holy crap.

12 Q. Mr. Tijerina, is that your signature on  
13 Exhibit No. 4?

14 A. Yes.

15 (WHEREUPON, a certain document was  
16 marked Deposition Exhibit No. 5,  
17 for identification, as of 2/15/23.)

18 BY MR. JORDAN:

19 Q. I'm going to hand you what I'm marking as  
20 Exhibit No. 5. I'd like you to look at this document.  
21 And it's got two pages. Let's start with you telling  
22 me what the second page is.

23 A. Give me a minute. This looks like a  
24 breakdown of hours on Upwork.

25 Q. Okay. These are hours that you would have

1 manually added to Upwork for payment?

2 A. Correct.

3 Q. So if I'm right, this shows 168 hours,  
4 correct?

5 A. Correct.

6 Q. So you would be paid 168 hours at whatever  
7 hourly rate you were at at the time?

8 A. Correct.

9 Q. You will see here at the bottom of page 1  
10 Elena Jablonski says, "23 hours for Monday sticks out."  
11 Then lists out all of the hours goes from page 1 to 2.  
12 Then Grant Eckert asks you, "Can you clarify the 23  
13 hours?"

14 Do you see that?

15 A. Yes.

16 Q. Then you say, "Hi, Grant. 12 hours for  
17 ASW."

18 What does that mean?

19 A. That would have been my time at Affiliate  
20 Summit West. So we were at a conference there.

21 Q. You were turning in hours for going to that  
22 conference?

23 A. Correct.

24 Q. It says 11 hours for ASW trip expenses?

25 A. Correct.

1 Q. Team building, tips, et cetera, what is  
2 that?

3 A. Team building, tips, trip expenses.

4 Q. I don't understand. 11 hours for -- I  
5 don't understand that line. That makes no sense to me.  
6 Can you explain it.

7 A. So depending on what my hourly rate was at  
8 the time, divide the expenses by that to get the hours  
9 calculation.

10 Q. Why would you not just say, "Reimburse me a  
11 thousand bucks"?

12 A. That was not always presented as an option.

13 Q. What do you mean?

14 A. From HR.

15 Q. I don't understand what you mean.

16 A. I didn't know I could do that all of the  
17 time with HR.

18 Q. You didn't know you could do what?

19 A. Get -- submit these team building expenses  
20 for reimbursement.

21 Q. So you would reflect them in terms of hours  
22 on Upwork?

23 A. So yes.

24 Q. So a couple things I want to know. So for  
25 sure, right, this Monday, January 27 entry here of 23

1 hours?

2 A. Uh-huh.

3 Q. That certainly reflects more than key  
4 strokes, right?

5 A. This was all manually entered. I was not  
6 at the computer.

7 Q. Perfect. That was 23 hours you typed in  
8 regardless of what Upwork told you the timer on Upwork  
9 would have said or not said?

10 A. Because I was at -- physically at a  
11 conference.

12 Q. It also means that you actually didn't work  
13 23 hours that day, but you were telling Grant and Elena  
14 which you only worked 12 hours that day, correct?

15 A. Yes.

16 Q. Grant says, "Adam, don't you submit  
17 expenses as an expense reimbursement?"

18 A. Okay.

19 Q. Do you recall what you said in response?

20 A. It looks like I said, "Were you able to  
21 clear the hours up?" Okay. Where is his response?

22 Q. This is not your deposition, Mr. Tijerina.  
23 You can do whatever you want. It's not really funny.

24 A. Okay.

25 Q. We're trying to understand the allegations

1 hours?

2 A. Because that's the first thing.

3 Q. Mr. Tijerina, let me finish my question.

4 Is it your testimony that if it's manually  
5 entered it's an expense reimbursement?

6 A. No.

7 Q. Okay. Then the question as to whether they  
8 are manually entered or not has nothing to do with my  
9 question. My question is, can you and I agree that the  
10 hours listed on page 2 of Exhibit No. 5 do not  
11 accurately reflect the hours you worked in that  
12 particular period represented?

13 A. For Monday, January 27, I did not work 23  
14 hours.

15 Q. What about Friday, January 24?

16 A. That looks like a normal shift, yes, but I  
17 can't say for certain without seeing the screen shots.

18 Q. You don't know for sure?

19 A. Correct.

20 Q. What about January 30?

21 A. Same answer.

22 Q. Have no idea if that's work or there's  
23 expenses baked into that?

24 A. Well, they all look like 13 to 14 hours  
25 which is a normal shift for me. So those would likely

1 hours.

2 Q. Mr. Tijerina, you and I both agree whether  
3 they're manually added or not has nothing to do, right,  
4 with whether there is an expense reimbursement? That  
5 was what you testified to now twice, right? Am I  
6 right?

7 A. I testified that 11 hours are for  
8 reimbursement.

9 Q. You don't know one way or the other from  
10 looking at this report -- whether they are manual  
11 entered or not?

12 A. I'm unable. Go ahead.

13 Q. You would manually enter your actual work  
14 hours too?

15 A. It depends. And that was approved per  
16 Danny. We had a conversation one time, "Hey, Danny,  
17 I'm not always at the computer, but sometimes when I go  
18 to the restroom or take a shower I get some thoughts  
19 and ideas." He's like, "Hey, me too. Some of my best  
20 ideas come from being in the bathroom."

21 Q. You work in the shower?

22 A. I get ideas in the shower, yes, because  
23 that's --

24 Q. While you were going to the bathroom?

25 A. Or while I'm going to the bathroom, yes.

1           day?

2           A.       I don't remember that day, but I had  
3           conversations with they wanted to iron out the details  
4           as far as handing over all of the logins I had to, and  
5           all the stuff I had access to.

6           Q.       Who did you talk to about that?

7           A.       I don't remember actually.

8           Q.       Okay. How soon -- how long after you had  
9           that conversation with Danny did you actually stop  
10          doing work for National Debt Relief?

11          A.       I think it was a few weeks actually.

12          Q.       Did you apply for unemployment?

13          A.       I did not.

14          Q.       You were sent a severance agreement?

15          A.       Correct.

16          Q.       Who sent that severance agreement to you?

17          A.       It might have been Ed.

18          Q.       Did you read the agreement at the time?

19          A.       Probably.

20          Q.       Did you take it to a lawyer?

21          A.       I took it to two lawyers actually.

22          Q.       Okay. And who are those two lawyers?

23          A.       I would have to look up their names. One  
24          was in New York, one was in Texas.

25          Q.       Who was the lawyer in Texas?

1 A. I would have to look it up the name.

2 Q. How did you find the names?

3 A. It might have been a Google search.

4 Q. How did you go about -- you Google  
5 searched. How would you go about finding their names  
6 now?

7 A. Checking my email.

8 Q. Did you engage the lawyer -- either one of  
9 them?

10 A. As far as?

11 Q. Did you talk to them about your agreement?

12 A. Yes.

13 Q. I don't want to know the substance of what  
14 you talked to them about. Okay. But do they have  
15 correspondence back to you regarding your agreement?  
16 Did you guys engage in written correspondence?

17 A. I don't know. I would have to check.

18 Q. How many different calls or meetings did  
19 you have with these lawyers?

20 A. It should have been just one.

21 Q. With each?

22 A. Yes.

23 Q. Did you pay for those lawyers?

24 A. Yes.

25 Q. How much did you pay?

1           A.       I think one was 300, and one might have  
2       been 500.

3           Q.       Why did you see two different lawyers?

4           A.       Because the company was based in New York,  
5       and I was based in Texas.

6           Q.       And did you make -- did you send revisions  
7       to that agreement back to Ed?

8           A.       We had a conversation.

9           Q.       When you are talking about Ed, who are you  
10      talking about?

11         A.       Ed Groh.

12         Q.       Who is sitting here in the room with you  
13      right now?

14         A.       Yes, I believe so.

15         Q.       You had conversations?

16         A.       We had one follow-up conversation on the  
17      phone. I don't think we did much through email other  
18      than setting up the conversation.

19         Q.       Let me ask you. Am I right that one of the  
20      issues you raised was this idea that Upwork pays you  
21      some money, a dollar per hour?

22         A.       To log my time.

23         Q.       They pay you?

24         A.       They logged the time. It's coming from  
25      NDR.

Exhibit No. 7.

(WHEREUPON, a certain document was  
marked Deposition Exhibit No. 7,  
for identification, as of 2/15/23.)

BY MR. JORDAN:

Q. The -- do you recall in your agreement releasing claims?

A. Yes, there was a bunch of claims that I was releasing even though they shouldn't have been in there in the first place.

Q. Well, why would they not be in there in the first place?

A. That's what the two lawyers told me. You can't give up those rights.

Q. I do not want you to tell me what those lawyers told you.

A. Okay.

Q. Despite that you just did.

Did you understand among other things you released your rights under the Fair Labor Standards Act?

A. Which was one that I couldn't release.

Q. But it's in the agreement?

A. But you can't be released per the lawyer.

Q. This is the lawyer in Texas?

1           A.       I don't know if it was the Texas or the New  
2           York one.

3           Q.       Well, what else did the lawyer tell you  
4           about this agreement?

5           A.       Thought I wasn't supposed to tell you what  
6           he told me about the agreement.

7           Q.       I think you waived your privilege with  
8           regards to what that lawyer told you at this point  
9           because I warned you and then you said it again. So  
10          what else did the -- that lawyer, I won't talk about  
11          Laura or her team. What else did that lawyer in Texas  
12          tell you about the agreement?

13          A.       I don't remember if it was the Texas or the  
14          New York one.

15          Q.       But you nevertheless released those claims  
16          anyway?

17          A.       I signed the agreement, correct.

18          Q.       Despite the advice that you got from that  
19          counsel?

20          A.       Because he advised that we could pursue  
21          those after even if we signed that.

22          Q.       So he said, "Why don't you sign the  
23          agreement, get paid the consideration, and then pursue  
24          the overtime afterwards"?

25          A.       He said, "You can't waive that right and we

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF TEXAS  
3                   SAN ANTONIO DIVISION

4                   ADAM TIJERINA,         )  
5                   Plaintiff,         )  
6                   vs.                   ) CIVIL ACTION NO: 5:22-CV-00928-XR  
7                   NATIONAL DEBT         )  
8                   RELIEF, LLC,         )  
9                   Defendant.         )

10                  REPORTER'S CERTIFICATION

11                  ORAL DEPOSITION OF

12                  ADAM TIJERINA

13                  February 15, 2023

14                  I, Dana Shapiro, a Certified Shorthand Reporter,  
15                  hereby certify to the following:

16                  That the witness, ADAM TIJERINA, was duly sworn  
17                  by the officer and that the transcript of the oral  
18                  deposition is a true record of the testimony given by  
19                  the witness;

20                  I further certify that pursuant to FRCP Rule  
21                  30(e)(1) that the signature of the deponent: was  
22                  requested by the deponent or a party before the  
23                  completion of the deposition and that the signature is  
24                  to be before any notary public and returned within 30  
25                  days from date of receipt of the transcript. If  
                        returned, the attached Changes and Signature Pages  
                        contain any changes and reasons therefore;

                        I further certify that I am neither counsel for,  
                        related to, nor employed by any of the parties or

1           attorneys in the action in which this proceeding was  
2           taken, and further that I am not financially or  
3           otherwise interested in the outcome of the action.

4           Certified to by me this March 2nd, 2023.

5

6

7



Dana Shapiro, Illinois CSR 84-3597

8

Expiration Date: 5/31/2023

9

Firm Registration No. 571

10

Veritext Legal Solutions

300 Throckmorton Street, Suite 1600

Fort Worth, Texas 76102

Phone .817-336-3042

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 COUNTY OF TRAVIS )  
2 STATE OF TEXAS )

3 I hereby certify that the witness was notified on  
4 \_\_\_\_\_, that the witness has 30 days  
5 after being notified by the officer that the transcript  
6 is available for review by the witness and if there are  
7 changes in the form or substance to be made, then the  
8 witness shall sign a statement reciting such changes  
9 and the reasons given by the witness for making them;

10 That the witness' signature was/was not returned  
11 as of \_\_\_\_\_.

12 Subscribed and sworn to on this \_\_\_\_\_ day of  
13 \_\_\_\_\_, 20\_\_\_.  
14



Dana Shapiro, Illinois CSR 84-3597

16 Expiration Date: 5/31/2023

Firm Registration No. 571

17 Veritext Legal Solutions

300 Throckmorton Street, Suite 1600

18 Fort Worth, Texas 76102

Phone. 817-336-3042

19

20

21

22

23

24

25